IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-6-2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD No.1615 of 2006
and
M.P.No.1 of 2006

1.K.T.R.Chowdhry
2.C.H.Chandrasekar Rao .. Petitioners

vs

1.G.Mohan
2.Shanti .. Respondents

Civil revision petition preferred under Sec.25(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended by Act 23 of 1973 and Act 1 of 1980 against the judgment and decree passed in RCA No.1328 of 2005 dated 7.6.2006 by the VII Judge, Court of Small Causes, Chennai, (appellate authority), confirming the fair and decreetal order passed in RCOP No.964 of 2005 dated 25.11.2005 passed by the XVI Judge, Court of Small Causes at Chennai (Rent Controller).

For Petitioners : Mr.Ashok Menon
for M/s.Menon & Goklaney
Associates

For Respondents : Mr.T.V.Vineeth Kumar

ORDER

An order of the Rent Control Appellate Authority namely VII Judge, Court of Small Causes, Chennai, affirming an order of dismissal passed by the Rent Controller namely XVI Judge, Court of Small Causes, Chennai, in RCOP No.964 of 2005 filed under Sec.17(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act for restoration of amenity, is the subject matter of challenge in this revision.

2.The Court heard the learned Counsel on either side.

3.The case of the revision petitioners/tenants before the authorities below was that they became tenants in the year 1996 under the previous owner in respect of the shop premises for non-residential purposes; that in the year 2002, the property was purchased by the present owner who is the first respondent herein; that as per the agreement between the parties, there was an electricity service connection for the supply of electric energy to the premises; that there was a meter inside the premises of the respondents; that the landlord used to send a chit

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calculating the electric energy actually consumed by the tenants, by entering the meter reading; that the payment was used to be made on or before 15th of every month; but, in the instant case, as usual, it was not done by him; that the landlord also removed the fuse carrier on 13.5.2005; thereby, he has actually terminated the amenity, and under the circumstances, the application was brought forth before the Rent Controller. Added further in the course of the application that the monthly rental agreed was Rs.4,500/-; that besides that, a sum of Rs.3,500/- is being paid towards amenity charges, thus totalling to Rs.8,000/-; that initially, there was a security deposit of Rs.3.25 lakhs made, out of which Rs.2.25 lakhs was paid on 17.5.2002 itself; that the first respondent filed a RCOP for eviction on the ground of willful default and additional accommodation; that the same was also pending; that in that proceedings, this contention was also raised; that apart from that, while the first respondent threatened them to vacate, the petitioners filed a suit in O.S.No.3079 of 2005 for a permanent injunction restraining the respondents herein from evicting them from the premises; that interim injunction application was also pending; that under the circumstances, he has now disconnected the electricity service connection deliberately in order to force them to vacate from the property, and hence, it has become necessary to restore the amenity of the electricity supply to the shop portion in the petition mentioned premises.

4.The application was resisted by the landlord. While denying all the contentions in respect of the restoration of the amenity, he would state that the petitioners had not paid the rents for the past 8 months; that they have not even paid the electricity consumption charges during that period; that a separate meter and electricity service connection were given to the petitioners; that for the month of May 2005, the bill was to be paid on or before 15th May, 2005; that the petitioners never cared to pay the electricity charges; that the Officers of the Electricity Board disconnected the service connection on 20.5.2005; that the first respondent never disconnected the electricity service connection to the petitioners' premises, and under the circumstances, the petition was to be dismissed.

5.The Rent Controller, on enquiry, dismissed the application, and the appeal by the tenants was also dismissed. Under the circumstances, now this revision has been brought forth before this Court.

6.Advancing his arguments on behalf of the revision petitioners, the learned Counsel would submit that in the instant case, all the circumstances were brought to the notice of the lower authorities that there was a security deposit of Rs.3.25 lakhs; that as per the decision of the Supreme Court, he could carry only one month advance, and the balance has got to be adjusted towards the rental; that there was no rental default; that this plea was raised even in the application filed by the landlord for eviction on the ground of willful default; that there was a threat by him; that a suit has also been filed for permanent injunction; that it is also pending; that while the matter stood thus, the landlord has mischievously instructed the Electricity Board officials in order to make disconnection of the said electricity service connection; that he has not supplied the card enabling the petitioners to make the payment of the electricity consumption charges; that all the above have been proved by necessary evidence before the Rent Controller; but the Rent Controller failed to appreciate the same and has dismissed the application; that the

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appellate forum has also not looked into any one of the factual or legal positions and has also affirmed the order, and hence, the orders of the authorities below have got to be set aside.

7.The Court heard the learned Counsel for the first respondent, who, in short, would submit that the application itself was not maintainable; that there was a separate service connection and meter; that the disconnection was made by the Electricity Board for the non-payment of the electricity consumption charges; that under the circumstances, no question of any direction under Sec.17(1) of the Act for restoration of the amenity would arise, and hence, the revision has got to be dismissed.

8.After careful consideration of the rival submissions made, this Court is of the considered opinion that the revision does not carry any merit whatsoever. Admittedly, the revision petitioners have been the tenants under the previous owner, and from 2002 onwards, when the property was purchased by the present landlord, who is the first respondent herein, they were under him. According to them, there was a security deposit of Rs.3.25 lakhs. But, this was disputed by the opposite party. However, it is not the matter in issue in this proceedings. Admittedly, there has been a service connection in respect of the three shops under the occupation of the tenants. There is also a separate meter. Nowhere it is pleaded by the revision petitioners before this Court that there was an independent sub meter, and calculation was used to be made, and accordingly, they used to pay. That apart, in the instant case, the petitioners have also produced Ex.R1, wherefrom it could be evident that there was a separate service connection. The payment of the electricity consumption charges for the month of May 2005 was, admittedly, not made and for the following months also. Now, at this juncture, it was the act of the Electricity Board in making disconnection of the service connection. It would be more apt and appropriate to reproduce Sec.17(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act as follows:

> "Sec.17(1): No landlord shall, without just or sufficient cause, cut off or withhold or cause to be cut off or withheld any of the amenities enjoyed by the tenant were in existence during the previous tenancy."

9.From the very reading of the above provision, it would be clear that there could be a direction to the landlord to restore the amenity so long as the termination was done by him. But, in the instant case, it was not a termination of service connection by the landlord, but by the Electricity Board for the non-payment of the electricity consumption charges by the tenants in respect of the billing what was made. It is also pertinent to point out that there is a separate service connection for the premises and also a separate meter. So long as the disconnection was an act of the Electricity Board, no direction could be given to the present landlord for the restoration. Under the circumstances, the application itself was not maintainable. The tenants who have not made the payment of the electricity consumption charges, have suffered a disconnection in the hands of the Electricity Board for which the landlord who is the first respondent herein, cannot be found fault with. Hence, the dismissal of the application by the authorities below were correct both factually and legally. No infirmity or illegality is noticed in the orders of the authorities below.

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10.It is made clear that the order above will not in any way stand in the way of the revision petitioners/tenants in following the procedural formalities before the Electricity Board for the restoration of the electric supply.

11.In the result, this civil revision petition fails, and the same is dismissed. No costs. Consequently, connected MP is also dismissed.

nsv/

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Registrar, Court of Small Causes, Chennai.

2.The VII Judge, Court of Small Causes,
(Rent Control Appellate Authority) Chennai.

3.The XVI Judge, Court of Small Causes,
(Rent Controller)Chennai.

+2 ccs to M/s.Menon & Goklaney, Advocate Sr.No.36549.

+1 cc to Mr.T.V.Vineeth Kumar, Advocate Sr.No.36492.

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